

MINUTES
ZONING BOARD OF APPEALS
JUNE 5, 2006

The meeting was held in Stow Town Building and began at 7:30 p.m. Board members present were Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate) and Lee Heron (associate). Mr. Barney joined the meeting at 7:50 p.m.

Bruce E. Fletcher - The public hearing was held in Stow Town Building and was opened at 7:35 p.m. on the application for special permit filed by **Bruce E. Fletcher, P. O. Box 393, Stow** under Section 3.9 of the Zoning Bylaw, "Non-Conforming Uses and Structures", to allow re-establishment of a residential use that has been discontinued for more than two years and construction of a single-family dwelling with accessory apartment at **13 Crescent Street**. Also filed was a petition for easterly side yard variance of twenty (20) feet and westerly side yard variance of eight (8) feet under Section 4.4, "Table of Dimensional Requirements", to allow the reconstruction. The property contains 8,167 sq. ft. and is shown on Stow Property Map U-10 as Parcel No. 2.

Board members present: Arthur Lowden, John Clayton, Edmund Tarnuzzer and Lee Heron (associate). Mr. Tarnuzzer chaired and advised the applicant that with only four Board members present, any decision reached would require a unanimous vote by all four members. Mr. Fletcher was given the option of continuing the hearing when there could be a complete board of five members, or continuing with four. Mr. Fletcher chose to proceed with the hearing.

Mr. Tarnuzzer read the notices of hearing as they had appeared in the *Beacon Villager* on May 18 and 25, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt. Those abutters present were John Wassink of 12 Crescent Street; James Lodine of 11 Crescent Street; and Clement Todesco of 15 Crescent Street. Mr. Tarnuzzer recited the requirements for grant of special permit and the criteria to be met for grant of variance.

Mr. Fletcher stated he was not seeking special treatment in view of his association with the Town, and the Board assured him that would not be the case. He said that the proposal was in the interests of the town center rather than personal gain. The attempt is to re-establish the house site as it was prior to the fire and as close as possible to the previous structure in height and size. Pictures of the original dwelling were included with the filings. They had been given to an architect with instructions to design a structure as close as possible. The length of the original dwelling was 52 feet, but the replacement will be 44 feet plus a three-foot porch. The plan submitted showed a five-foot porch, but it was Mr. Fletcher's intention to keep it to three feet.

It is the intent to place the southeasterly corner about four feet further from the lot line than the previous structure. The original stone foundation must be replaced. A shed dormer will be constructed on the westerly side to balance that on the easterly side for greater interior floor area on about the same ground coverage. The footprint is as close as possible to the original. Mr. Fletcher said he would attempt to move away from the Todesco lot line to the east to afford him more light, but it is not possible to move much more than a foot or so due to the location of the well. The septic system was designed for three bedrooms. There will be two in the main area and one in the accessory apartment. Mr. Fletcher said the Planning Board has issued a permit for that 700-sq. ft. apartment.

As regards the easterly side yard variance request of twenty feet, Mr. Fletcher said it might be possible to allow a six-foot side yard but it would be tight when considering equipment access for foundation excavation.

Mr. Lodine of 11 Crescent Street said he would prefer to see the new structure further away, but did not believe a difference of one or two feet would matter. Mr. Todesco of 15 Crescent Street supported the proposed plan.

The Board indicated it was familiar with the site, but requested that the westerly limit of the proposed structure be indicated for the site visit.

Mr. Lodine said he applauded the intention to construct the new structure as close as possible to the original.

A site visit was planned for Thursday, June 8 at 9:00 a.m.

The hearing was closed at 7:55 p.m.

Robert & Caroline Collings - The public hearing continued from May 8, 2006 was reconvened in Stow Town Building at 7:57 p.m. on the application filed by **Robert and Caroline Collings, 137 Barton Road,, Stow** for Special Permit under Section 5.1.1.7 of the Zoning Bylaw, "Flood Plain/Wetlands District", to allow construction of a dwelling on property felt to be included within said district through mapping error. The property, currently owned by Linda Cornell, contains 12.4 acres and is shown on Stow Property Map R-13 as Parcel 15.

Board members present: Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate), Lee Heron (associate).

Mr. Tarnuzzer chaired and read the notice of public hearing as it had appeared in the *Beacon Villager* on April 20 and April 27, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt. Abutters present were Linda Cornell, 222 Barton Road; Thomas Quinn, representing Maynard Sand & Gravel; Richard Martin, representing Honey Pot Hill Orchards; and Robert Collings, 137 Barton Road.

Mr. Tarnuzzer advised he had sought from the Town Administrator permission for Mr. Collings' attorney, Robert Dionisi, to contact Town Counsel Witten. Permission was granted with the proviso that the expense incurred be the responsibility of Mr. Collings.

Mr. Collings was again represented by Attorney Robert Dionisi, Jr. of Sudbury. As was stated previously, the plan submitted purports to show that the established Flood Plain-Wetlands line is in error. Mr. Dionisi noted that the memo of the Conservation Commission to the Board indicates that a portion of the subject property falls within the FEMA flood plain, but the knoll does not. He also called attention to a Planning Board letter dated February 22, 1985 to the Mass. Dept. of Food and Agriculture as regards the Martin property and the Recreation-Conservation District line. The letter signed by then vice chairman William Hamblen recollected that the district line was intended to coincide with the limit of the flood plain as defined at that time. The letter further stated that "if the land can be shown by its elevation at the time as shown on the Corps of Engineers 'Flood Plains and Profiles' plan referenced by the Stow Zoning Bylaw, then the landowner should have to go no further than the Board of Appeals to correct the line".

In response, Mr. Tarnuzzer pointed out that the Recreation-Conservation District line also includes the knoll. Mr. Collings said the intention of that district line was to coincide with the flood plain line. Mr. Dionisi said his client was trying to persuade the Board to grant him a special permit due to a mapping error and that the proposed structure will be above the flood plain. Mr. Tarnuzzer said the ZBA cannot remove the knoll from the Recreation-Conservation District where dwellings are not allowed.

Because the district follows the flood plain line, to Mr. Dionisi it follows that the Board could grant a special permit in the Recreation-Conservation District. It appeared to Mr. Collings there is a mapping error and the next step is for both districts to coincide. If one is corrected, then both are corrected. Mr. Clayton pointed out that the problem is that could be close to spot zoning. Mr. Dionisi said they were not asking for a zoning change, but to correct an error. They are asking to be able to construct a single-family house on the property. The position is that Recreation-Conservation is the overriding district. Again, Mr. Tarnuzzer said they are asking to change the zoning district line. Mr. Dionisi denied that.

Mr. Clayton inquired into access to the site. Mr. Collings replied there is a roadway to the site, and access will become a Planning Board or Conservation Commission issue. He asked if Town Counsel had been contacted. Mr. Tarnuzzer said there had been contact that resulted in a privileged communication.

Thomas French of Barton Road pointed out there are few abutters to this property. He noted that Section 5.1.1.7 gives the Board no authority to override a zoning district. Only town meeting can change zoning. Ms. Cornell, owner of the property, said there had been a structure on the property at one time and noted a provision of the zoning bylaw (3.1.2.4) that allows camp sites for seasonal use with special permit by the Planning Board. There would be little impact with one house on 13 acres.

Mr. Clayton inquired into the proposed house location. Mr. Collings replied it would be more than 200 feet from the river and more than 100 feet from the district line.

Linda Hathaway of Crescent Street noted that there was a similar situation related to the Lewis property on Crescent Street as regarded a flood plain line that required a town meeting vote. She was unsure if one could cross the Recreation-Conservation district line to access the Residential District.

The Board indicated it would contact Town Counsel. Mr. French requested that a copy of his letter to the Board be forwarded to Counsel.

The hearing was closed at 8:29 p.m.

Richard & Marilou Bonetti - The public hearing continued from May 8, 2006 was reconvened in Stow Town Building at 8:31 p.m. on the Appeal from Unfavorable Action filed by **Richard and Marilou Bonetti, 425 Taylor Road, Stow** and the letter of the Building Commissioner dated March 2, 2006 concerning operation of **R & M Earthwork & Landscape Co.** at said address. The property contains 111,510 sq. ft. and is shown on Stow Property Map R-6 as Parcel 115.

Board members present: Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate), Lee Heron (associate).

Mr. Tarnuzzer chaired and read the notice of public hearing as it had appeared in the *Beacon Villager* on April 20 and April 27, 2006. Hearing notices had been forwarded to all abutters by certified mail, return receipt. Abutters present were Kathleen and William Joss of 437 Taylor Road; Jerzy Zieba of 413 Taylor Road; Laurie Larson of 435 Taylor Road; and Michael Taylor of 433 Taylor Road. Mr. Tarnuzzer recited the general criteria of Sections 8, 14 and 15 of the Mass. General Laws Chapter 40A pertaining to the appeals procedure.

Mr. Bonetti was present as was his attorney Edward Woll. Mr. Bonetti presented a history of his business operation that has been conducted from the Taylor Road property for a number of years. About four or five years ago there was a complaint from a neighbor about the business and noise. Mr. Bonetti has lived on the property over forty years and many neighbors have been there for a number of years also.

The complaint concerned noise and use of an earth screener. For the past year records have been kept of the number of hours of use that has totaled 154 hours over four years. The times used are minimal. The area is fenced and there is very little noise from the screener. There is one large diesel truck and a record of those hours is also kept. There are also several other trucks. Very little can be seen from property lines because of the existing vegetation, year around. Nothing unsightly is kept in the yard. Mr. Bonetti pointed out this is his home as well as a business. There are currently four trucks in the yard on the original parcel. With regard to complaints of cars parked on the street, it may have been employees or at times visiting relatives. He noted there is a neighbor with a business that is at times noisy.

Employees arrive in trucks and one on a motorcycle. Abutters to the rear are about 1200 feet away. Mr. Bonetti said he was not sending forth fumes. He feels he is being needlessly picked on, and it is very upsetting to both himself and his wife.

Mr. Tarnuzzer noted the letter of the Building Inspector dated March 2, 2006 and asked if there was agreement or disagreement with some of the statements therein. Attorney Woll said they do not contest a "cease and desist" and have complied with the requests. This is a grandfathered contractor yard, and that was resolved. All activity of the nursery operation is in compliance. The Building Inspector has been provided a list of all vehicles owned over the last 34 years to demonstrate the non-conforming use. There is a contractor next door that makes it difficult to determine from where noise may be coming. All cars have been moved off the road. Mr. Woll noted there was a relocation of Taylor Road at some time, and that portion abandoned may actually be owned by Mr. Bonetti.

Noting the Building Inspector's advice that a special permit be sought from the ZBA, Mr. Woll said they will apply for such as regards the expanded use area. He suggested this hearing be continued to a date after a special permit application to be dealt with at the same time. Mr. Clayton commented that a special permit filing would make this action moot. Mr. Woll responded it was the intent to keep all options open.

Attorney Steven Graham, representing abutter Taylor, felt the Board was "jumping ahead" before giving abutters an opportunity to speak. Mr. Tarnuzzer said it was not the intention and invited comments from the gathering.

Laurie Larson of 435 Taylor Road said there was no obvious noise from the Bonetti property until 2001. Kathleen Joss of 437 Taylor Road said noise begins at 6:15 a.m., and there are diesel fumes from trucks warming up. She said she had spoken to Mr. Bonetti about it. There is a lot of activity with trucks in and out all day. She does not consider it a twice-a-day operation. Ms. Larson submitted to the Board a copy of an expired business certificate for R & M with a comment by the prior Building Inspector that the property is for office only and with no outside storage of equipment. Mr. Woll said that all issues were dealt with in a prior proceeding.

Attorney Graham noted that the settlement papers referred to addressed only the screener. He would like to see other papers with regard to resolution of other issues. An application for special permit will have to demonstrate the history and to prove the right to continue the use. This is not a home occupation. Mr. Bonetti is advertising the landscape business from his home. Mr. Lowden assured Mr. Graham that the Board will request all pertinent information to support the special permit application. Mr. Graham felt there is the question of whether the right to operate the business has been lost. With continuance, this matter will be stretched out for at least five months, and another season will be gone.

Ms. Joss noted that to some abutters there is no problem, and those people tend to be across the road. Noise seems to travel to the rear.

On motion of Mr. Clayton, second by Mr. Lowden, it was voted unanimously to continue the hearing until application for special permit to be heard on August 7th. Mr. Woll was to grant the Board, in writing, an extension to November 7th for the decision on the appeal of the Building Commissioner's letter of March 2, 2006.

The hearing was adjourned at 9:31 p.m. to reconvene on Monday, August 7, 2006 at a time to be determined.

Site Visit - The Board planned a site visit to 13 Crescent Street on Thursday, June 8, 2006 commencing at 9:00 a.m.

Adjournment - The meeting was adjourned at 9:35 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board